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STUDY OF THE PROBLEM OF DISCRIMINATION
AGAINST INDIGENOUS POPULATIONS

Final report (supplementary part) submitted by the
Special Rapporteur, Mr. José R. Martínez Gabe

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
INTRODUCTION	1 - 20	2

INTRODUCTION

1. The purpose of this document is to introduce the supplementary part of the final report which is submitted to the Sub-Commission this year for its consideration.
2. With regard to the materials used as a basis and support for the study in particular, at the beginning of the current year further observations and data were received concerning two countries. 1/ The relevant information has accordingly been incorporated in the chapters written after receipt of the replies. It has not been included in the chapters which had already been prepared in the months following the Sub-Commission's thirty-fourth session but before the new data were received.
3. The summaries relating to the three other countries from which a reply was awaited 2/ have been used in the form in which they were sent to the respective Governments for further observations and data, since such observations and data have been not forthcoming.
4. In January 1981 a note was received from the Holy See in which comments were made on a part of chapter VII, "Basic principles", in relation to the situation of the Concordat with Colombia and the system of missions in that country. Comments were made both on the original Concordat concluded between the Holy See and Colombia at the end of the last century and on the Concordat currently in force between the two countries. These data will be incorporated as a new paragraph between paragraphs 111 and 112 of the above-mentioned chapter.
5. Since the Sub-Commission's thirty-fourth session a number of important meetings have been held on questions of relevance to the present study. In the preparation of the supplementary part of the final report, account has been taken of the final documents of these meetings, to which reference is made in particular in the following paragraphs.
6. The International NGO Conference on Indigenous Peoples and the Land was held at the Palais des Nations from 15 to 18 December 1981 and was attended by many indigenous representatives from various parts of the world. As a result of this Conference, which had already been mentioned in chapter IV, 3/ five basic documents were issued: a final declaration which is annexed to the present document and is the only declaration emanating from the Conference as a whole, and the reports of the four Commissions in which the work of the Conference was organized, namely: Commission 1, the legal commission; Commission 2 on indigenous philosophy and the land; Commission 3 on transnational corporations and their effect on the resources and land of indigenous peoples; and Commission 4 on the impact of the nuclear arms build-up on the land and life of indigenous peoples.

1/ Canada and the United States of America

2/ Brazil, Guatemala and Guyana; see document E/CN.4/Sub.2/476.

3/ E/CN.4/Sub.2/476/Add.5, paras. 151-154.

7. The Conference of Specialists on Ethnocide and Ethnodevelopment in Latin America, convened by UNESCO and the Latin American School of Social Sciences (FLACSO), was held at San José, Costa Rica, 4/ from 6 to 12 December 1981. This Conference was attended by specialists from various countries and organizations and, in particular, experts representing indigenous organizations. As a result of this Conference the San José Declaration was approved on 11 December 1981; it is included as an annex to chapter II on action taken by the specialized agencies of the United Nations. 5/

8. Immediately afterwards, from 14 to 21 December 1981, the third United Nations Seminar on recourse procedures and other forms of protection available to victims of racial discrimination and activities to be undertaken at the national and regional levels was held at Managua, Nicaragua, within the context of the Decade for Action to Combat Racism and Racial Discrimination. Particularly in the discussion of the substantive items 6/ and in the conclusions of the Seminar, reference was made to the problems of indigenous populations in the western hemisphere. The conclusions of the Seminar are annexed to this document. 7/

9. As from February 1982 a series of round-table meetings began, sponsored and organized by the International Institute of Human Rights in Strasbourg, France, and the Faculty of Law of the University of Santa Clara, California, United States of America. The first round-table was held in Strasbourg and the second in Santa Clara, California; the third is to be held in Ottawa. It is proposed that two further round-tables should be held in an African and an Asian country and that a final round-table, to be attended by all the participants in the previous round-tables, should be held in Geneva in 1983.

10. The second World Conference to Combat Racism and Racial Discrimination will be held from 1 to 12 August 1983 to close the Decade for Action to Combat Racism and Racial Discrimination; item 10 (g) of its provisional agenda 8/ contains the following reference to indigenous populations: "Review and evaluation of activities undertaken to achieve the goals and objectives of the Decade for Action to Combat Racism and Racial Discrimination at the national, regional and international levels and in implementation of the Programme of Action adopted at the first World Conference regarding in particular: ... (g). The situation of disadvantaged groups such as indigenous populations."

11. It remains to give a very brief outline of the substance of the documents submitted to the Sub-Commission for consideration this year. Information will also be given on the order in which the various documents of the final report should be placed in accordance with the plan of the report.

4/ La Catalina, Santa Bárbara de Heredia.

5/ E/CN.4/Sub.2/1982/2/Add.1, annex VI.

6/ Report of the seminar, ST/HR/SER.A/11, paras. 21-102.

7/ Ibid., para. 112.

8/ E/1982/26, annex. The International NGO Conference on Indigenous Peoples and the Land had requested that the question of indigenous peoples should figure prominently in the agenda for this Conference (Declaration of the Conference).

12. Turning first to the substance of the chapters and documents submitted this year, it will be noted that chapter II on action taken by the specialized agencies of the United Nations (E/CN.4/Sub.2/1982/2/Add.1) contains a summary of the activities of the Food and Agriculture Organization of the United Nations (FAO), the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the World Health Organization (WHO). The chapter sets forth the relevant data essentially in the form in which they were communicated by the agencies themselves up to the time when the chapter was drafted. No formal communication has been received from the agencies since their most recent official submissions, which were sent on 10 June 1981 (FAO), 22 May 1981 (ILO), 17 July 1981 (UNESCO) and 7 May 1981 (WHO).

13. Chapter III on action taken by the Organization of American States (OAS) (E/CN.4/Sub.2/1982/2/Add.2) contains a very brief summary of the activities of the intergovernmental regional organization, focusing in particular on its activities during recent years. ^{2/} After outlining some basic provisions of the organization, it covers the activities of the Inter-American Commission on Human Rights and the Inter-American Indian Institute. No co-operation was received from OAS in the preparation of this chapter despite the numerous requests made in this respect; consequently, the summary contained in this document is based strictly on the material that were available for the purpose.

14. Chapter XVI on occupation, employment and vocational training (E/CN.4/Sub.2/1982/2/Add.3) takes up these questions after a historical outline of indigenous labour systems and the development of relevant international standards, and a brief reference to occupational categories and systems of employment. Under the heading "Conditions of employment: discrimination and the elimination thereof", the views of Governments on the question are considered. It then outlines the views of non-governmental organizations on discrimination and ways of eliminating it. Reference is made to forced changes in traditional occupations and coercive labour systems. Under the subheading "Vocational training and the creation of employment", there is a survey of vocational training and the protection of handicrafts. The chapter ends with comments and considerations on the various possibilities which exist in employment policy.

15. Chapter X on administrative arrangements (E/CN.4/Sub.2/1982/2/Add.4) deals with the arrangements made to formulate and administer official policy relating to the indigenous populations in the countries covered by the study and with the non-governmental organizations which are active in this sphere, in particular indigenous organizations.

The chapter is organized as follows. First, under the heading governmental entities and their functions, information is included on specialized ministries or cabinet-level bodies, specialized administrative entities within the latter bodies or attached thereto, as well as inter-agency co-ordinating bodies. Then the existence and functions of official advisory bodies is discussed, dealing immediately afterwards with autonomous entities that have been organized in some countries as

^{2/} A preliminary summary based on the activities of OAS up to 1974 appeared in document E/CN.4/Sub.2/L.596, paragraphs 59-87.

well as with parliamentary committees functioning in others. Reference is made then to countries where no specialized arrangements have been found to exist. To close the part relating to entities of a governmental character, attention is focused on aspects of staffing and funding these entities. The special features of certain mixed entities and their functions constitutes the next part under this heading, which ends with a discussion of non-governmental entities active in the field of indigenous affairs. Secular entities of domestic or international character are examined first, to enter later into a very succinct presentation of the very scanty materials available on religious entities active among society at large, the mission system and the Summer Institute of Linguistics.

16. Chapter XII on housing (E/CN.4/Sub.2/1982/2/Add.5) consists of a greatly augmented version of the rather preliminary text contained in document E/CN.4/Sub.2/L.596 paragraphs 90-113. It has been organized in such a way as to focus attention on the needs of indigenous populations and the problems and difficulties which arise in meeting them. On the basis of the information available, this chapter covers the following subjects. After introductory statements and an overview of special housing for certain indigenous groups, plus a presentation of general housing problems, aspects of discrimination and the elimination thereof are examined. The contemporary housing situation of indigenous groups living on traditional or reserved indigenous areas as well as of those residing outside of those areas is discussed, to come to whatever information is available on housing programmes formulated and implemented in the different countries covered by the study. Two groups of programmes are found to exist: those general programmes applicable on the same basis to all and those special housing schemes developed in particular for indigenous populations. The imposition of non-traditional housing patterns on indigenous populations due to the lack of consultation with them or their participation in those schemes is briefly examined on the basis of information available on this important aspect. Consultation and participation are the subject of the closing part of this chapter.

17. Chapter V, entitled "Definition of indigenous populations" (E/CN.4/Sub.2/1982/2/Add.6), contains a considerably augmented version of the previous version of the chapter which appeared in document E/CN.4/Sub.2/L.622, paragraphs 23-227. The available material on this question is set forth in the chapter and attention is drawn to the elements noted in the formulas used either for statistical purposes alone or also for more substantive purposes. In the few cases in which precise formulations are available, they have been included in their entirety - and not only in places where their elements are analysed separately - in order to give a complete picture of their significance. This chapter examines first the objective criteria centered on ancestry as well as culture, either in general or also mentioning specific aspects thereof such as religion, the fact of living under a tribal system, membership in an indigenous community, dress and means of livelihood. The cultural manifestation of languages is dealt with as a separate criterion because of its importance in many systems. Then the subjective criterion of group consciousness in its various aspects is discussed as an important element of many definitions. The multiple criterion consisting of different combinations of the former criteria, its advantages and disadvantages are then briefly discussed, to come later to another, subjective criterion of acceptance by the indigenous community often combined with group consciousness in multiple criteria formulations of great importance. A last individual criterion consisting of the objective fact of residence in certain parts of the country where indigenous people or culture prevail is then dealt with, to round up the particular elements discerned in the different formulations used in several of the countries covered in the present study. In order to give an idea of the complex formulations provided for in the legal systems of some countries as well as those that

are in use for purposes beyond mere statistical exercises a section under the title of "legal definitions" is included. The problems posed by changes in status from indigenous to non-indigenous and vice versa are the subject of two sections discussing the conditions stipulated in different systems for these changes. The requirement of registration established in certain countries is then examined with the correlative consequence of certification of registration or of the attribution of status through it. An important aspect of registration and certification is the determination of the authorities empowered to register and to certify, which closes this comparative analysis of provisions relating to the criteria used for the purposes of defining who is and who is not an indigenous person, group or community in the countries covered by the study on the basis of information available on these aspects.

18. Chapter XVIII on religious rights and practices (E/CN.4/Sub.2/1982/2/Add.7) contains a very much augmented version of the preliminary version which appeared in document E/CN.4/Sub.2/L.596, paragraphs 155-191. This chapter examines the available data concerning the rights of indigenous populations to profess and practise their religion or belief and not to be compelled to participate in the activities of any religion or belief as de jure aspects in accordance with international and national standards thereon. The right not to be discriminated against on the ground of indigenous religion or belief is then examined first in its de jure situation based on existing international and domestic standards, and secondly, in its de facto situation with the special problems arising in particular for indigenous peoples and their religious or other beliefs. Thirdly, a brief reference is made to the contemporary religious affiliation of indigenous populations as reflected in information available on these aspects to show the importance of adherence to those religions or beliefs today in the countries covered by the present study. The right of indigenous populations not to be compelled to receive instruction in a religion or belief contrary to their convictions or to the wishes of indigenous parents or legal guardians is then also discussed. Attention is focused on special measures for the prevention and punishment of interference with indigenous rites and ceremonies through penal provisions of general application and on the importance of these rites and ceremonies for their practitioners. The problems and difficulties arising in this area are then examined in the detail permitted by the available data in situations connected with official holidays in employment and schooling as well as residence outside of areas of indigenous culture (foster or adoptive homes, boarding schools, internment in health-care or penal institutions; problems in border crossings for purposes of indigenous ceremonies abroad as well as in connection with funeral ceremonies are also discussed; access to, and protection of, sacred lands and places, with emphasis on the importance of these lands and places for indigenous practitioners; and the importance of the preservation of the natural character of sacred lands and places, plus the problems and difficulties arising in those respects are discussed, together with those arising in connection with the gathering of natural substances so important for indigenous religious or other beliefs. Access to and protection of, burial places and the problems and difficulties connected therewith are examined very succinctly, prior to a discussion of the availability, possession, care and protection of sacred objects, the protection of their sacred character when crossing borders and when these objects are in public or private museums. The possibility of returning these objects to the indigenous communities concerned is briefly discussed. The chapter ends with some brief remarks on the protection of places and objects of archaeological interest.

19. It had been intended to submit this year, as addendum 3, the third part consisting of the conclusions, proposals and recommendations relating to the study. It would have been possible to do so using the texts of all the substantive chapters already completed and even of the chapters which it was not possible to submit to the Sub-Commission this year. However, since for mainly technical reasons it has not been possible to submit to the Sub-Commission at the current session some of the chapters intended for submission this year, it was thought preferable to defer the submission of the last part of the final report until next year, when the chapters missing this year will already be before the Sub-Commission. It is further felt that the Sub-Commission has received a number of new documents which it will be able to begin to consider at the current session, together with the report of the Working Group on Indigenous Populations, which has held its first session this year. This Working Group is meeting a need and has been persistently called for by the representatives of indigenous and non-indigenous groups who have participated in all kinds of international conferences on the rights of indigenous populations since 1977 up to the present day.

20. Indicated below is the order in which should be placed the various documents containing the parts of the final report which are before the Sub-Commission this year. The order is as follows:

First Part

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|----|-------------|---|---------------------------|
| 1. | Chapter I | Measures adopted by the United Nations | E/CN.4/Sub.2/476/Add.4 |
| 2. | Chapter II | Action taken by the specialized agencies | E/CN.4/Sub.2/1982/2/Add.1 |
| 3. | Chapter III | Action taken by the Organization of American States | E/CN.4/Sub.2/1982/2/Add.2 |
| 4. | Chapter IV | Other international action | E/CN.4/Sub.2/476/Add.5 |

Second Part

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|-----|--------------|--|---------------------------|
| 5. | Chapter V | Definition of indigenous populations | E/CN.4/Sub.2/1982/2/Add.6 |
| 6. | Chapter VI | Composition of the population | E/CN.4/Sub.2/476/Add.1 |
| 7. | Chapter VII | Basic principles | E/CN.4/Sub.2/476/Add.2 |
| 8. | Chapter VIII | General measures for the prohibition, prevention and elimination of discrimination | E/CN.4/Sub.2/476/Add.5 |
| 9. | Chapter IX | Fundamental policy | - |
| 10. | Chapter X | Administrative arrangements | E/CN.4/Sub.2/1982/2/Add.4 |
| 11. | Chapter XI | Health, etc. | - |
| 12. | Chapter XII | Housing | E/CN.4/Sub.2/1982/2/Add.5 |

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| 13. | Chapter XIII | Education | - |
| 14. | Chapter XIV | Language | E/CN.4/Sub.2/476/Add.6 |
| 15. | Chapter XV | Culture and cultural, social and legal institutions | - |
| 16. | Chapter XVI | Occupation, employment and vocational training | E/CN.4/Sub.2/1982/2/Add.5 |
| 17. | Chapter XVII | Right to own property with particular reference to the land | - |
| 18. | Chapter XVIII | Political rights | - |
| 19. | Chapter XIX | Religious rights and practices | E/CN.4/Sub.2/1982/2/Add.7 |
| 20. | Chapter XX | Equality in the administration of justice and legal assistance | - |

Third Part

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| 21. | Conclusions, proposals and recommendations | E/CN.4/Sub.2/1982/2/Add.8 |
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Annexes For the moment in various parts of the report, as in this document. In the final version of the final report all the annexes will be included at the end in a consistent manner.